IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 358 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UPADHYAY MAHENDRAKUMAR MANEKLAL

Versus

STATE OF GUJARAT

Appearance:

MR RC JANI for Petitioner

MR MA BUKHARI, LEARNED APP for Respondent No. 1

MR SB BRAHMBHATT for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/09/2000

ORAL JUDGEMENT

1. This revision against the order dated June 25, 1999 of the Additional Sessions Judge, Mehsana is pending admission. The impugned order was passed in an appeal against judgment and order of the trial Court convicting

the revisionist under sec.138 of the Negotiable Instruments Act and sentencing him accordingly.

2. By an order dated July 9, 1999, the complainant was permitted to be impleaded as respondent no.2. He has been served but, none is present on his behalf. As such, Shri RC Jani, learned counsel for the revisionist and Mr MA Bukhari, learned APP for respondent no.1 have been heard. After hearing the arguments of Shri Jani, I feel that the revision can be finally disposed of at the admission stage.

3. The only contention of Shri Jani, learned counsel for the revisionist has been that, in the trial Court viz. before the Magistrate, original receipt was shown that a sum of Rs.30,000=00 was paid by the revisionist to the complainant on January 27, 1994, and since this receipt was in possession of the counsel for the revisionist in the trial Court and was not produced during trial hence, a request was made for considering this receipt at the time of conclusion of the trial. But, that request was turned down by the learned Magistrate. The same request was made in the appellate Court which was also turned down by the appellate Court. The judgment of the Appellate Court shows that xerox copy of typed receipt dated January 27, 1994 was produced but, it was not admitted by the complainant/respondent no.2 for the obvious reasons that the xerox copy did not bear the original signature of the complainant nor, original writing with revenue stamp and signature of the complainant was found on such receipt. As such, it was not admitted as defence evidence and was also not exhibited. It further appears from the judgment of the appellate Court that it was not total denial by the complainant that he never received Rs.30,000=00 from the respondent on January 27, 1994 or that he did not issue a receipt for that amount duly signed and bearing properly cancelled revenue stamp. However, his stand was that, since it was not original receipt he was not in a position to make appropriate identification of his signature. On this ground suspicion was thrown that the xerox copy of receipt appears to have been prepared with some typed writing and that certain words of signature of the complainant were not decipherable. Accepting this stand of the complainant, the lower appellate Court observed that a prudent person would not be in a position to make appropriate identification of his signature and that the trial Court was justified in concluding that it was a false and fabricated receipt showing payment of Rs.30,000=00 on January 27, 1994.

4. Giving such abrupt finding without looking to the original or admitting the original in defence evidence; neither the trial Court nor the lower appellate Court was justified in holding that the receipt was a false and fabricated document or that no payment of Rs.30,000=00 was made. Shri Jani has shown the original receipt in this revision and has conceded that it was because of the mistake of the counsel representing the revisionist in the trial Court as well as the appellate Court that this receipt in original could not be brought on record. Having examined the receipt shown by Shri Jani, I feel that the findings of two courts below that the receipt is false and fabricated is not justified - more particularly when the original was not brought on record and it was not compared with the xerox copy mark-12/6 on the record.

5. In view of the aforesaid discussion, I am of the view that the judgments and orders of conviction and sentence passed by the two courts below cannot be sustained in the eyes of law. In the interest of justice, the trial Court should be directed to permit the revisionist to file original receipt dated January 27, 1994 as defence evidence and the revisionist may be permitted by the trial Court to prove this receipt and the complainant may be afforded an opportunity, if he so desires, to rebut this receipt and thereafter fresh judgment shall be delivered by the trial Court, after hearing the arguments of the two sides, in accordance with law.

6. The revision, therefore, succeeds and is hereby allowed. The judgments of the two courts below are set-aside. Criminal Case No.1213/95 is remanded to the Judicial Magistrate, First Class, Kadi, District Mehsana for retrial in the light of observations made in the foregoing portion of this judgment.

September 18, 2000. (D.C. Srivastava, J.)

/sakkaf